IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

RP.No. 596 of 2007(D)

AGAINST THE JUDGEMENT/ORDER IN WPC.35738/2005

.....

PETITIONER IN I.A.AND IST RESPONDENT IN W.P.C.

RUKHIYA BEEVI,
W/O.IBRAHIM,PATTASSERY HOUSE,ELOOR VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.V.SANKARA RAJA
SMT.T.T.JOSEPHINA

RESPONDENTS: RESPONDENTS 2 TO 4 IN I.A. AND RESPONDENTS 2 TO 4

---

1. ABDUL AZEEZ,S/O.HASSAN,
RESIDING AT C 46, FACT TOWNSHIP
UDYOGANMANDAL, ERNAKULAM.

2. NOUSAHD,S/O.IBRAHIM OF PATASSERY HOUSE,
ELOOR VILLAGE.

3. ISMAIL KUNJI,KANNATHU THEKKETHIL HOUSE
THEVALAKKARA, PADINJAREKARA, PO
KOLLAM DISTRICT.

4. YOUSUFFKUNJU, VELAMPARAMBIL HOUSE,
VADAKKUMTHALA,KIZHAKKU PO
KOLLAM DISTRICT.

R1 BY ADV. SRI.ANOOP JOSEPH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

R.P.No.596 of 2007 in W.P.(C) No.35738 of 2005

- -

Dated: 2nd July, 2007

ORDER

Smt.T.T.Josephina, learned counsel for the review petitioner invited my attention once again to the full text of Ext.P1 document. She submitted that Ext.P1 document is capable of being construed as a bond only. She drew my attention to the penultimate paragraph of the plaint wherein the plaintiff has stated that the cause of action for the suit has arisen on 21.4.2001. Thus, according to her, it is conceded by the plaintiff himself that the liability in question was created for the first time under Annexure I suit. The learned counsel is certainly correct when she submits that the penultimate paragraph of the suit refers to the cause of action for the suit as having arisen on the date on which the suit document was executed. But then the expression 'cause of action' has been judicially interpreted times without number as the whole bundles of every material facts which are necessary for the plaintiff to establish his case, if traversed by the opposite side in support of his right to obtain a positive judgment. What constitutes cause of action will decide not on what the plaintiff states it to be in a particular paragraph of the plaint, but will depend on what are the essential facts the plaintiff will have to establish in

the event of a contest for securing a positive decree in the litigation. Construing the expression in that way it will be seen that the plaintiff may have to establish that the defendants approached him for a loan for conducting the marriage of the first defendant's daughter and that they promised to repay the loan amount with interest on or before 10.2.2002 in the month of April 2002 even prior to the execution of the suit document. Thus in the event of contest the request for loan and the promise to repay the loan will also form part of the cause of action. As already indicated by me in the judgment sought to be reviewed it may be possible to construe Ext.P1 as a bond. At the same time construction that Ext.P1 is an agreement is equally possible. The reliance placed by me on the judgment of this court in **Mathai Mathew v. Thampi** (1989(1) KLT 138) I reiterate is proper. The Review Petition will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**